

EXHIBIT A

APPEAL

**United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:12-cv-11280-DJC**

Bacchi v. Massachusetts Mutual Life Insurance Company

Assigned to: Judge Denise J. Casper

Demand: \$5,001,000

related Case: [1:12-cv-11596-JLT](#)

Case in other court: USCA - First Circuit, 17-02129

USCA - First Circuit, 17-02190

USCA - First Circuit, 18-01096

Cause: 12:635 Breach of Insurance Contract

Date Filed: 07/11/2012

Date Terminated: 11/08/2017

Jury Demand: Plaintiff

Nature of Suit: 110 Insurance

Jurisdiction: Diversity

Plaintiff

Karen L Bacchi

Individually and on Behalf of all

Persons Similarly Situated

represented by **Jason B. Adkins**

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Objector

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Objector

Francis Vitale
Class Member-Objector

Date Filed	#	Docket Text
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11/15/2017	311	NOTICE OF APPEAL re 308 Memorandum and Order, 309 Judgment by Caroline Tucker Filing fee: \$ 505, receipt number 0101-6887842 Fee Status: Not Exempt. NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov MUST be completed and submitted to the Court of Appeals. Counsel shall register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf. Counsel shall also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/cmecf. US District Court Clerk to deliver official record to Court of Appeals by 12/5/2017. (Harrison, Mardi) (Modified on 11/15/2017 to Correct Docket Text and CM/ECF Document Link) (Paine, Matthew). (Entered: 11/15/2017)
11/16/2017	312	Certified and Transmitted Abbreviated Electronic Record on Appeal to US Court of Appeals re 311 Notice of Appeal (Paine, Matthew) (Entered: 11/16/2017)
11/16/2017	313	USCA Case Number 17-2129 for 311 Notice of Appeal filed by Caroline Tucker. (Paine, Matthew) (Entered: 11/16/2017)
12/04/2017	314	NOTICE OF APPEAL as to 308 Memorandum & ORDER, 309 Judgment by Francis Vitale NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov MUST be completed and submitted to the Court of Appeals. Counsel shall register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf. Counsel shall also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/cmecf. US District Court Clerk to deliver official record to Court of Appeals by 12/26/2017. (Maynard, Timothy) (Entered: 12/04/2017)
12/04/2017	317	USCA Appeal Fees received \$505.00 receipt number 1BST065696 re 314 Notice of Appeal,,, filed by Francis Vitale (Coppola, Katelyn) (Entered: 12/06/2017)
12/05/2017	315	Certified and Transmitted Abbreviated Electronic Record on Appeal to US Court of Appeals re 314 Notice of Appeal (Paine, Matthew) (Entered: 12/05/2017)
12/05/2017	316	USCA Case Number 17-2190 for 314 Notice of Appeal filed by Francis Vitale. (Paine, Matthew) (Entered: 12/05/2017)
01/09/2018	318	MOTION for Bond [<i>Expedited Motion to Set Appeal Bond With Request For Expedited Opposition Filing Date, If Any</i>] by Karen L Bacchi.(Adkins, Jason) (Entered: 01/09/2018)
01/09/2018	319	MEMORANDUM in Support re 318 MOTION for Bond [<i>Expedited Motion to Set Appeal Bond With Request For Expedited Opposition Filing Date, If Any</i>] filed by Karen L Bacchi. (Adkins, Jason) (Entered: 01/09/2018)
01/09/2018	320	

		DECLARATION re 318 MOTION for Bond [<i>Expedited Motion to Set Appeal Bond With Request For Expedited Opposition Filing Date, If Any</i>] by Karen L Bacchi. (Attachments: # 1 Exhibit A)(Adkins, Jason) (Entered: 01/09/2018)
01/13/2018	321	First Opposition re 318 MOTION for Bond [<i>Expedited Motion to Set Appeal Bond With Request For Expedited Opposition Filing Date, If Any</i>] filed by Caroline Tucker. (Harrison, Mardi) (Entered: 01/13/2018)
01/22/2018	322	Opposition to Plaintiff's Motion re 318 MOTION for Bond [<i>Expedited Motion to Set Appeal Bond With Request For Expedited Opposition Filing Date, If Any</i>] filed by Francis Vitale. (McKillop, Matthew) (Entered: 01/22/2018)
01/23/2018	323	MOTION for Leave to File <i>Reply Brief</i> by Karen L Bacchi. (Attachments: # 1 Exhibit 1)(Adkins, Jason) (Entered: 01/23/2018)
01/24/2018	324	Judge Denise J. Casper: ELECTRONIC ORDER entered granting 323 Motion for Leave to File Reply Brief in Support of Plaintiff's Expedited Motion to Set Appeal Bond with Request for Expedited Opposition Filing Date, If Any; Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include - Leave to file granted on (date of order)- in the caption of the document. (Hourihan, Lisa) (Entered: 01/24/2018)
01/24/2018	325	REPLY to Response to 318 MOTION for Bond [<i>Expedited Motion to Set Appeal Bond With Request For Expedited Opposition Filing Date, If Any</i>] filed by Karen L Bacchi. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Adkins, Jason) (Entered: 01/24/2018)
01/25/2018	326	<p>Judge Denise J. Casper: ELECTRONIC ORDER entered re: 318 Motion for Bond [<i>Expedited Motion to Set Appeal Bond With Request For Expedited Opposition Filing Date, If Any</i>]. Plaintiffs motion for an appeal bond pursuant to Fed. R. App. 7, is ALLOWED. To the extent that Plaintiff sought same on an expedited basis, that is DENIED and the Court has considered the opposition to same of the two objectors who have filed notices of appeal. D. 321, 322 as well as Plaintiffs reply brief, D. 325.</p> <p>Under Rule 7, a district court may require an appellant to file a bond in an amount necessary to ensure payment of costs on appeal. Whether such bond is required and the amount of same “is a matter best left to the sound discretion of the district court” and, if the appeal is frivolous, as Plaintiff contends, such finding may be considered in determining whether a bond is warranted. <u>Skolnick v. Harlow</u>, 820 F.3d 13, 15 (1st Cir. 1987). Although the two objectors dispute whether the Court should include potential attorneys fees in any calculation of the bond sought here, such is appropriate if the district court concludes that the appeal is frivolous such that attorneys fees and costs could be awarded on appeal under Fed. R. App. P. 38 (allowing “just damages and single or double costs to the appellee” if an appeal is determined to be frivolous). <u>Skolnick</u>, 820 F.3d at 15; see <u>Hill v. State Street Corp.</u>, 2015 WL 1734996, at *3 (D. Mass. April 16, 2015). Although the objectors, Ms. Tucker and Mr. Vitale, D. 283 and D. 280, had a right to object to the settlement and to press an appeal as to the rejection of those objections, this Court does not</p>

		<p>conclude that their appeal about such objections would be non-frivolous on appeal as to the \$37.5 common fund settlement for MassMutual policyholders. The Court will not repeat its analysis of their (and other) objections which criticized the size of the common fund, the distribution to class members, the scope of release and the attorneys fee and cost award, but incorporates its analysis of these objections here. D. 308.</p> <p>That having been said, the Court remains mindful of the need to balance “public policy reasons to minimize the hurdles to a litigants right to appeal imposed by appeal bonds,” <u>In re Pharm. Indus. Avg. Wholesale Price Litig.</u>, 520 F.Supp.2d 274, 279 (D. Mass. 2007) against the interest promoted by a bond requirement to “ensure that a class litigating a frivolous appeal will not be injured or held up spoilers,” <u>id.</u> at 278, a real issue here where 99.99% of the class of 2.71 million policyholders registered no objection to the settlement. D. 319 at 2.</p> <p>Plaintiff, on behalf of the certified class, seeks a bond of \$311,175, half of the amount of the taxable double costs allowed under Fed. R. App. P. 39 (\$600); the cost of delay, calculated as one-year loss of post-judgment interest (\$543,750), and estimated attorneys fees and costs for litigating the appeal (\$78,000). Other than the cost of delay measured in loss of post-judgment interest, Plaintiff do not seek to cover any additional administrative costs that might be incurred in administering the fund and the class while the appeal is pending. Moreover, Plaintiffs request is supported by an affidavit from Attorney Jason Adkins, class counsel, regarding these costs, including the attorneys fees. Also, there is an absence of any showing that either appellant could not afford such bond.</p> <p>Accordingly, the Court ALLOWS the motion for a bond, in the amount requested of \$311,175, where this amount accounts only for half of the costs that the Plaintiff class might incur and such a percentage reduction of the total costs serves, in part, to account for the competing public policy interest of access to the appellate process against the concern that an appeal of questionable merit will hold up the disbursement of a settlement not objected to by the vast majority of the class members. Such bond, shall be imposed jointly and severally between the objectors and shall be due within seven days of this Order.</p> <p>(McKillop, Matthew) (Entered: 01/25/2018)</p>
01/25/2018	327	NOTICE by Karen L Bacchi [<i>Notice of Service</i>] (Friedman, Andrew) (Entered: 01/25/2018)
01/27/2018	328	NOTICE OF APPEAL as to 326 Order on Motion for Bond,,,,,,,,,,,,, by Caroline Tucker Filing fee: \$ 505, receipt number 0101-6983390 Fee Status: Not Exempt. NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov MUST be completed and submitted to the Court of Appeals. Counsel shall register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf. Counsel shall also

		review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/cmecf. US District Court Clerk to deliver official record to Court of Appeals by 2/16/2018. (Harrison, Mardi) (Entered: 01/27/2018)
01/29/2018	329	Certified and Transmitted Abbreviated Electronic Record on Appeal to US Court of Appeals re 328 Notice of Appeal. (Paine, Matthew) (Entered: 01/29/2018)
01/29/2018	330	USCA Case Number 18-1096 for 328 Notice of Appeal filed by Caroline Tucker. (Paine, Matthew) (Entered: 01/29/2018)

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